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H.B. 302

CONVEYANCE OF WATER RIGHTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

AN ACT RELATING TO WATER AND IRRIGATION; CHANGING THE REQUIREMENT THAT COUNTY RECORDERS SEND COPIES OF DEEDS TO THE STATE ENGINEER; PROVIDING THAT FOR PURPOSES OF CONVEYANCES OF LAND A WATER RIGHT EVIDENCED BY CERTAIN DOCUMENTS IS APPURTENANT TO LAND; PROVIDING WHERE A WATER RIGHT IS APPURTENANT TO LAND; PROVIDING THAT WHEN PART OF A WATER RIGHT IS CONVEYED IN A LAND CONVEYANCE DOCUMENT, THE PORTION NOT CONVEYED IS PRESUMED TO BE RESERVED; AND PROVIDING THAT THE AMOUNT OF A WATER RIGHT CONVEYED AS AN APPURTENANCE TO LAND IS PROPORTIONATE TO THE CONVEYED PORTION OF THE WATER RIGHT'S AUTHORIZED PLACE OF USE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

73-1-10, as last amended by Chapter 51, Laws of Utah 1996

73-1-11, as last amended by Chapter 51, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 73-1-10 is amended to read:

73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recordation of deed.

(1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.

(b) The deed must be recorded in the office of the recorder of the county where the [place]

point of diversion of the water [~~from its natural channel~~] is [~~situated~~] located and in the county where the water is [~~applied~~] used.

(c) [~~A certified~~] Upon written request to the county recorder by the state engineer, the county recorder shall promptly transmit to the state engineer a copy of the deed, or other instrument, transferring the water right [~~shall be promptly transmitted by the county recorder to the state engineer for filing~~].

(d) A recorded deed of a water right shall[,] from the time of its filing in the office of the county recorder constitute notice of its contents to [~~subsequent purchasers, mortgagees, and lien holders~~] all persons.

(2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the procedures applicable to securities set forth in Title 70A, Chapter 8, [~~Utah~~] Uniform Commercial Code - Investment Securities.

Section 2. Section 73-1-11 is amended to read:

14 73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions --
 15 Conveyance of a portion of irrigated land -- Appurtenant water rights -- Evidence -- Where
 16 appurtenant -- Partial conveyances of water and land.

17 (1) A water right ~~[to the use of water]~~ appurtenant to land shall pass to the grantee of the
 18 land, ~~and, if the right has been exercised in irrigating different parcels of land at different times,~~
 19 ~~it shall pass to the grantee of a parcel of land on which the right was exercised next preceding the~~
 20 ~~time of the execution of its conveyance.~~ (2) Prior to conveyance, all unpaid assessments must be
 21 paid by the grantee. (3) ~~The~~ unless the grantor ~~[may]:~~

22 (a) specifically ~~[reserve a]~~ reserves the water right ~~[to the use of water,]~~ or any part of the
 23 water right in the land conveyance ~~[, or the grantor may convey.]~~ document;

24 (b) conveys a part of the water right in the land conveyance document; or

25 (c) conveys the water right ~~[to the use of water]~~ in a separate conveyance document prior
 26 to or contemporaneously with the execution of the land conveyance document.

27 (2) (a) If the water right has been exercised in irrigating different parcels of land at
 28 different times, it shall pass to the grantee of a parcel of land on which the water right was
 29 exercised next preceding the time the land conveyance was executed.

30 (b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.

31 (3) In any conveyance, the grantee assumes the obligation for any unpaid assessment.

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1 (4) The right to the use of water evidenced by shares of stock in a corporation shall not be
 2 deemed appurtenant to ~~[the]~~ land.

3 (5) (a) This Subsection (5) governs land conveyances executed on or after May 4, 1998,
 4 and has no retrospective operation.

5 (b) For purposes of land conveyances only, a water right evidenced by any of the
 6 following documents is appurtenant to land:

7 (i) a decree entered by a court;

8 (ii) a certificate issued under Section 73-3-17;

9 (iii) a diligence claim for surface or underground water filed pursuant to Section 73-5-13;

10 (iv) a water user's claim executed for general determination of water rights proceedings
 11 conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to Section
 12 73-3-16;

13 (v) an approval for an application to appropriate water issued under Section 73-3-10;

14 (vi) an approval for an application to permanently change the place of use of water issued
 15 under Section 73-3-10; or

16 (vii) an approval for an application to exchange water issued under Section 73-3-20.

17 (c) For purposes of land conveyances only, the land to which a water right is appurtenant
 18 is the authorized place of use of water as described in the:

19 (i) decree;

20 (ii) certificate;

21 (iii) diligence claim;

22 (iv) water user's claim;

23 (v) approved application to appropriate water;

24 (vi) approved application to permanently change the place of use of water; or

25 (vii) approved exchange application.

26 (d) If a grantor conveys part of the water right in a land conveyance document pursuant
 27 to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by the
 28 grantor.

29 (e) If the land conveyed constitutes only a portion of the authorized place of use for the
 30 water right, the amount of the appurtenant water right that passes to the grantee shall be
 31 proportionate to the conveyed portion of the authorized place of use.

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**Legislative Review Note
as of 1-12-98 1:14 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

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CONVEYANCE OF WATER RIGHTS EXPLANATION

73-1-11. Appurtenant waters - Use as passing under conveyance

The statute currently states that appurtenant water rights pass with the conveyance of land unless the rights are specifically reserved.

The courts have defined appurtenant water rights to be only those rights which have been perfected (decreed or certificated). **Currently, approved water right applications are not appurtenant.** Most water users and many others involved in the sale of land and water rights do not understand this aspect of the statute. **The common belief is that all water rights used on their land are appurtenant and pass with the land.** This creates a lot of problems for buyers and sellers in transactions which involve both land and water.

Another common misunderstanding is that only the portion of the water right specifically mentioned in the deed is transferred with the land. However, if the water user neglects to specifically reserve in the deed the portion being kept, the entire water right will be transferred.

The changes proposed by this bill provide more security and certainty for both the buyer and the seller in future transactions of land and water rights.

The substantive changes in this bill are:

- 1. As it relates to conveyance of land, all approved water rights will now be appurtenant to the land at the place described on the water right.**
- 2. If only a portion of the water right is mentioned in the land conveyance, it is presumed that the remainder of the water right is reserved by the seller.**
- 3. If a portion of the land is sold and the deed is silent concerning water, it is presumed that the amount of water right transferred is proportional to the amount of land conveyed.**

EXAMPLE: A person builds a house and gets a water right approved for a well for the house. The well is constructed but the home owner has not yet submitted proof to the State Engineer, so the water right is not yet perfected. The home owner then sells the house, but the water right for the well is not mentioned in the deed to the house because everyone involved in the transaction assumes it automatically transfers with the house. However, since it is not a perfected right, title to the well water right did not transfer with the house. The house may then be sold several times; each time the buyer and seller believing the water right title is being transferred. This creates a difficult water right ownership problem for the home owner.